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IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No. 806

ARTHUR LEDERER,

Petitioner,

vs.

UNITED STATES OF AMERICA, EX REL. PRENTISS M. BROWN, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

JOHN ELLIOTT BYRNE,
Attorney for Petitioner, Arthur Lederer.

LLOYD C. MOODY,
Of Counsel.

THE GUNTHORP-WARREN PRINTING COMPANY, 210 WEST JACKSON, CHICAGO

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UNITED STATES OF AMERICA, EX REL. PRENTISS M. BROWN, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, Arthur Lederer, respectfully seeks a review of the decision of the Circuit Court of Appeals for the Seventh Circuit, affirming his conviction of the offense of criminal contempt, consisting in the sale of meats at wholesale at prices alleged to have exceeded the maximum legal prices, under orders and regulations issued under the Emergency Price Control Act of 1942, in violation of a preliminary injunction (R. 10) issued by the United States District Court, for the Northern District of Illinois, upon complaint (R. 2) filed by the National Price Administrator

(50 U. S. C. A. 925). The District Court sentenced petitioner to imprisonment for one year and one day (R. 89-90). After petition for rehearing was denied by the Court of Appeals, a motion of petitioner to stay mandate so that petitioner could remain on bail pending application for Writ of Certiorari, was denied and petitioner began serving his sentence on March 3, 1944, and is now incarcerated.

Summary Statement of the Matters Involved.

The matter involved is the construction of the Emergency Price Control Act (hereinafter called the Act) with respect to its effect upon the procedure in criminal contempt cases involving violations of injunctions issued under the provisions of that Act.

Our contentions are that criminal contempt cases under the Act are subject to the discretion and control of the Department of Justice, rather than the Office of Price Administration;

that under the terms of the Act (as well as the general law), the charge of such contempt must allege wilfulness of defendant;

that publication of maximum prices established under the Act in the Federal Register does not alone constitute proof that defendant, charged with sales above such prices, had actual guilty knowledge of such prices;

that a punishment as for an infamous, felonious crime (penitentiary imprisonment for more than one year) cannot be imposed upon a charge consisting of an affidavit made merely upon information and belief by a layman; and

that punishment for violations of the Act should not be more severe when prosecuted in contempt than in indictment cases, unless exceptional circumstances justify such severity.

Jurisdiction.

The jurisdiction of the court is invoked under Section 240-a of the Judicial Code, as amended by Act of February 13, 1925, Section 347, Title 28 U. S. C. A.

Questions Presented.

(1) Whether the Emergency Price Control Act requires that criminal contempt prosecutions for violations of injunctions, issued in cases arising under the Act, must be conducted by the Attorney General or his assistants, as distinguished from attorneys for the Price Administrator.

(2) Whether in criminal contempt cases for violations of injunctions issued under the Act by selling commodities at prices above the maximum established prices, an allegation of willfulness is necessary.

(3) Whether the doctrine of judicial notice of prices established under the Act operates to impute guilty knowledge of such prices to defendant in a criminal contempt case.

(4) Whether in order to support a sentence to penitentiary imprisonment exceeding one year, the charge in criminal contempt cases must be made upon oath or affidavit of some person having a personal knowledge of the facts constituting commission of the offense by the defendant.

(5) Whether the statutory maximum of punishment for an offense charged by indictment should be exceeded in ordinary cases when such offense is charged as criminal contempt.

Reasons Relied on for Allowance of the Writ.

This Court has not yet decided the important questions of whether or not, in prosecutions for criminal contempt consisting of acts which are violations of the Emergency

Price Control Act, the prosecution should be conducted by the Attorney General or his assistants, as distinguished from the lawyers for the Price Administrator; whether in such prosecutions an allegation of wilfulness on the part of defendant is necessary; whether or not the sentence for acts which, when charged by indictment, are violations of the criminal provisions of the Emergency Price Control Act, a maximum of one year's imprisonment, may be exceeded when such acts are charged as in violation of an injunction; whether penitentiary imprisonment to more than one year may be imposed upon conviction of a charge made by a layman in an affidavit merely on information and belief; and whether the statutory maximum punishment for offenses prosecuted by indictment should be exceeded when prosecuted in contempt proceedings, in the absence of exceptional circumstances justifying such severity.

These are important questions of Federal Law involving the construction of the Emergency Price Control Act which should be decided by this Court for the guidance of all parties, courts and lawyers concerned with enforcement of the Act.

The lower court's decision on the question of absence of supervision by the Attorney General over contempt cases under the Act defeats the plain purpose of the law as expressed in the statute and in the Senate Report thereon; its decision that a charge of wilfulness is unnecessary in this case is contrary to the well-established general law, as well as the letter and spirit of the Act, and also in conflict with the lower court's prior decisions in *Garrigan* v. *U. S.*, 163 Fed. 16 and *McCauley* v. *First Trust & Savings Bank*, 276 Fed. 117. Its decision that a penitentiary imprisonment for more than a year (a punishment as for an infamous and felonious crime) may be imposed upon conviction of the charges contained in an affidavit made by a layman on information and belief, is contrary to the gen-

eral principles of criminal law. *In Re Claasen*, 140 U. S. 200; *U. S.* v. *Moreland*, 258 U. S. 433; Cf. *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 441.

The lower court's decision that judicial notice of contents of Federal Register obviates the need of proof of defendant's actual guilty knowledge of the facts set forth in the Federal Register, is contrary to law, (Wigmore on Evidence, Sections 2577, 2568) and allows of conviction of crime without confrontation of witnesses by defendant, in violation of due process of law; the lower court's decision that punishment may be more severe for offenses prosecuted in contempt cases than in indictment cases, without exceptional justifying circumstances, is contrary to the principle underlying the decisions of this Court. *Ex Parte Hudgings*, 249 U. S. 378.

Wherefore, your petitioner prays that a Writ of Certiorari issue herein, under seal of this Court, directed to the United States Circuit Court of Appeals, for the Seventh Circuit, commanding said court to certify and send to this Court a full and complete transcript of the record and proceedings of the Circuit Court of Appeals, had in the case numbered and entitled on its docket: No. 8405, *United States of America, ex rel. Prentiss M. Brown, Administrator, Office of Price Administration, Plaintiff-Appellee*, v. *Arthur Lederer, Defendant-Appellant*, to the end that this cause may be reviewed and determined by this Court, as provided for by the Statutes of the United States; and that the judgment herein of the said Circuit Court of Appeals be reversed by this Court; and for such other relief as to this Court may seem proper.

ARTHUR LEDERER,
Petitioner,
By JOHN ELLIOTT BYRNE,
Attorney for Petitioner.